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4 ESTHEFANY CHAPARRO NAVARRO, et  
5 al.,  
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7 Plaintiffs,  
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9 v.  
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11 UNITED STATES DEPARTMENT OF  
12 HOMELAND SECURITY, et al.,  
13

Defendants.  
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15 Case No. [17-cv-06404-DMR](#)  
16

17 **ORDER ON CROSS MOTIONS FOR  
18 SUMMARY JUDGMENT**  
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20 Re: Dkt. Nos. 69, 73  
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22 Plaintiffs Esthefany Chaparro Navarro (“Chaparro Navarro”) and Manuel Morales  
23 Rodriguez (“Morales”) filed this action under the Administrative Procedure Act (“APA”), 5  
24 U.S.C. § 701 et seq., and the Mandamus & Venue Act of 1962 (“MVA”), 28 U.S.C. § 1361,  
25 seeking to reverse the United States Citizenship and Immigration Services’s (“USCIS”) revocation  
26 of Chaparro Navarro’s previously-approved Petition for U Nonimmigrant Status and the agency’s  
consequent denial of derivative U nonimmigrant status to her father, Morales. Plaintiffs now  
move pursuant to Federal Rule of Civil Procedure 56 for summary judgment to reverse the  
November 30, 2018 decision by USCIS’s Administrative Appeals Office affirming the revocation.  
[Docket No. 69 (Pls.’ Mot.).] Defendants Department of Homeland Security (“DHS”), USCIS,  
Kevin K. McAleenan, L. Francis Cissna, Laura B. Zuchowski, and Barbara Q. Velarde cross-move  
for summary judgment to affirm the AAO’s decision. [Docket No. 73 (Defs.’ Mot.).]

The court held a hearing on December 19, 2019 and ordered the parties to submit  
supplemental briefing. [Docket No. 78.] The parties timely filed the requested briefing. [Docket  
Nos. 79-82.] For the following reasons, Plaintiffs’ motion is granted in part and denied in part.

I. STATUTORY FRAMEWORK

In 2000, Congress created the U nonimmigrant status or the “U visa” as part of the Victims

of Trafficking and Violence Protection Act of 2000 (the “Act”). Pub. L. 106-386, § 1513, 114 Stat. 1464 (2000). U nonimmigrant status is a classification for victims of certain crimes who report those crimes to law enforcement and cooperate in their investigation or prosecution.<sup>1</sup> Congress later passed legislation directing the Secretary of Homeland Security and others to promulgate regulations to implement the provisions of the Act. Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162, 828, 119 Stat. 2960 (2006). DHS’s resulting regulations give USCIS sole jurisdiction over all U visa petitions. 8 C.F.R. § 214.14(c)(1).

A petitioner must meet several criteria to be eligible for U nonimmigrant status, including the following: the petitioner must (1) have “suffered substantial physical or mental abuse as a result of having been a victim of” qualifying criminal activity; (2) possess information about the qualifying criminal activity; and (3) be “helpful” or “likely to be helpful” to a federal, state, or

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<sup>1</sup> The Act sets forth the purpose of the U visa as follows:

(A) The purpose of this section is to create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes described in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States. This visa will encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against aliens.

(B) Creating a new nonimmigrant visa classification will facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status. It also gives law enforcement officials a means to regularize the status of cooperating individuals during investigations or prosecutions. Providing temporary legal status to aliens who have been severely victimized by criminal activity also comports with the humanitarian interests of the United States.

(C) Finally, this section gives the Attorney General discretion to convert the status of such nonimmigrants to that of permanent residents when doing so is justified on humanitarian grounds, for family unity, or is otherwise in the public interest.

Pub. L. 106-386, § 1513, 114 Stat. 1464.

1 local law enforcement official or prosecutor, a federal or state judge, the Immigration and  
2 Naturalization Service of the Department of Justice, or to other federal, state, or local authorities  
3 investigating or prosecuting qualifying criminal activity. 8 U.S.C. § 1101(a)(15)(U)(i). The  
4 statute defines qualifying criminal activity as “that involving one or more of the following or any  
5 similar activity in violation of Federal, State, or local criminal law,” and lists numerous categories  
6 of criminal activity. 8 U.S.C. § 1101(a)(15)(U)(iii). The corresponding regulation states that  
7 “[t]he term ‘any similar activity’ refers to criminal offenses in which the nature and elements of  
8 the offenses are substantially similar to the statutorily enumerated list of criminal activities.” 8  
9 C.F.R. § 214.14(a)(9). Of relevance here, qualifying criminal activity includes “felonious  
10 assault.” 8 U.S.C. § 1101(a)(15)(U)(iii). The burden of establishing U nonimmigrant status is on  
11 the petitioner. 8 C.F.R. § 214.14(c)(4).

12 If USCIS approves a petition for U nonimmigrant status, the petitioner receives lawful  
13 nonimmigrant status and employment authorization for four years. 8 U.S.C. §§ 1184(p)(3)(B),  
14 1184(p)6. The petitioner may also apply for U nonimmigrant status for certain qualifying  
15 relatives. Where, as here, the petitioner is under 21 years old, qualifying relatives include the  
16 petitioner’s parents. 8 U.S.C. § 1101(a)(15)(U)(ii)(I). After three years of continuous physical  
17 presence in the United States, an individual with a U visa may apply to become a lawful  
18 permanent resident. 8 U.S.C. § 1255(m)(1).

19 The regulations provide that USCIS may revoke an approved petition for U nonimmigrant  
20 status upon notice to the petitioner for certain enumerated reasons, including where “[a]pproval of  
21 the petition was in error.” 8 C.F.R. § 214.14(h)(2)(i)(B). The revocation process requires USCIS  
22 to notify the petitioner in writing of its intent to revoke, and the notice must “contain a statement  
23 of the grounds for the revocation and the time period for the U nonimmigrant’s rebuttal.” 8 C.F.R.  
24 § 214.14(h)(2)(ii). If USCIS revokes the petition and terminates the petitioner’s U nonimmigrant  
25 status, the regulation requires USCIS to provide the petitioner “with a written notice of revocation  
26 that explains the specific reasons for the revocation.” *Id.* The petitioner may appeal a revocation  
27 by providing notice to the Administrative Appeals Office (“AAO”) within a certain time period. 8  
28 C.F.R. § 214.14(h)(3). Revocation of an approved petition for U nonimmigrant status terminates

1 that status for the “principal alien,” and results “in the denial of any pending [petitions] filed for  
2 qualifying family members . . .” 8 C.F.R. § 214.14(h)(4).

3 **II. FACTUAL AND PROCEDURAL BACKGROUND**

4 Plaintiffs Chaparro Navarro and Morales are natives and citizens of Mexico who live in  
5 San Francisco. [Docket No. 65 (1st Am. Compl., “FAC”) ¶¶ 13, 14.] In February 2010, a man  
6 attempted to steal Chaparro Navarro’s purse and then forcibly removed necklaces from her neck  
7 and fled. Chaparro Navarro was 14 years old at the time. Chaparro Navarro Administrative  
8 Record, “CNAR,” 156, 317, 345.<sup>2</sup> After Chaparro Navarro identified a suspect, prosecutors  
9 charged him with felony child endangerment and felony robbery. The case was eventually settled  
10 as a misdemeanor. Chaparro Navarro “was cooperative during the whole process” of investigation  
11 and prosecution of the crime. CNAR 156. Following the robbery, Chaparro Navarro became  
12 depressed and fearful. She received therapy and was diagnosed with depressive disorder, NOS  
13 and post-traumatic stress disorder. CNAR 346, 349.

14 In December 2011, Chaparro Navarro filed a petition for U nonimmigrant status. CNAR  
15 289-96. USCIS granted her petition on October 1, 2012. CNAR 289, 353. On April 8, 2013,  
16 Chaparro Navarro filed a petition for derivative U nonimmigrant status on behalf of her father,  
17 Morales. Morales Administrative Record, “MAR,” 11-19.

18 On September 16, 2014, USCIS issued a notice of intent to revoke its 2012 approval of  
19 Chaparro Navarro’s petition for U nonimmigrant status on the ground that “the approval was in  
20 error.” CNAR 353-55. In its notice, USCIS stated that the evidence submitted with Chaparro  
21 Navarro’s petition did not establish that she was a victim of felonious assault. CNAR 354.  
22 Chaparro submitted a response on October 17, 2014 in which she argued that robbery under  
23 California law is a felonious assault and thus she was a victim of a qualifying crime under 8  
24 C.F.R. § 214.14(a)(9). She also submitted additional evidence and briefing in support of her  
25 response. CNAR 358-408. On October 7, 2015, USCIS notified Chaparro Navarro that her

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27 <sup>2</sup> The administrative record filed at Docket No. 68-1 is actually two records filed together—one  
28 pertaining to Chaparro Navarro and one pertaining to Morales. Chaparro Navarro’s record is filed  
at Docket No. 68-1, ECF pp. 1-416. Morales’s record is filed at Docket No. 68-1, ECF pp. 417-  
522.

1 petition was revoked because “what happened to [Chaparro Navarro] is not substantially similar to  
2 felonious assault.” CNAR 287-88. USCIS also denied Morales’s derivative petition. MAR 7-8.

3 In November 2015, Chaparro Navarro appealed the revocation to USCIS. CNAR 241-42.  
4 In her appeal, Chaparro Navarro argued that robbery and felony child endangerment are  
5 substantially similar to felonious assault. She also argued that USCIS lacks statutory authority to  
6 revoke an individual’s U nonimmigrant status. CNAR 144-51.

7 The AAO dismissed her appeal in a decision issued on November 8, 2016, concluding that  
8 the revocation was proper because Chaparro Navarro was not the victim of qualifying criminal  
9 activity. It further concluded that “USCIS has the authority to revoke an approved petition for U  
10 nonimmigrant status under 8 C.F.R. § 214.14(h).” CNAR 135-42.

11 Chaparro Navarro filed this lawsuit on November 2, 2017. On September 6, 2018, USCIS  
12 notified Chaparro Navarro that it had reopened her appeal and gave her the opportunity to submit  
13 further evidence and arguments in support of her eligibility for U nonimmigrant status. CNAR  
14 15-16. Chaparro Navarro submitted further evidence and arguments and the AAO issued a second  
15 decision on November 30, 2018, again finding that Chaparro Navarro was not the victim of  
16 qualifying criminal activity. CNAR 1-14, 17-38. The AAO also concluded that even if Chaparro  
17 Navarro “had established that she was the victim of a qualifying crime or criminal activity  
18 substantially similar to a qualifying crime, the record does not establish that she suffered  
19 substantial [physical or mental] abuse as a result” of the crime. CNAR 12. The November 30,  
20 2018 AAO decision constitutes the final agency action in this case.

21 **III. LEGAL STANDARDS**

22 Plaintiffs challenge the AAO’s November 30, 2018 decision under 5 U.S.C. § 706(2)(A)  
23 and (C).<sup>3</sup> These provisions state that a reviewing court “shall . . . hold unlawful and set aside  
24 agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of

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28 <sup>3</sup> Plaintiffs make a passing reference to 5 U.S.C. § 706(2)(D), which provides that a reviewing court shall “hold unlawful and set aside agency action, findings, and conclusions found to be . . . (D) without observance of procedure required by law.” See Pls.’ Mot. 7. As Plaintiffs do not address this provision elsewhere in their motion, the court assumes that they are not raising an argument under this subsection.

1 discretion, or otherwise not in accordance with law; [or] . . . (C) in excess of statutory jurisdiction,  
2 authority, or limitations, or short of statutory right . . .”

3       **A.     Review Under 5 U.S.C. § 706(2)(A)**

4       “Review under the arbitrary and capricious standard is deferential.” *Nat'l Ass'n of Home*  
5 *Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007). In such cases, a district court’s role is not  
6 fact-finding. *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1472 (9th Cir. 1994).  
7 “[T]he function of the district court is to determine whether or not as a matter of law the evidence  
8 in the administrative record permitted the agency to make the decision it did.” *Occidental Eng'g*  
9 *Co. v. I.N.S.*, 753 F.2d 766, 769 (9th Cir. 1985). A court should not vacate an agency’s decision  
10 unless it has “relied on factors which Congress had not intended it to consider, entirely failed to  
11 consider an important aspect of the problem, offered an explanation for its decision that runs  
12 counter to the evidence before the agency, or is so implausible that it could not be ascribed to a  
13 difference in view or the product of agency expertise.” *Nat'l Ass'n of Home Builders*, 551 U.S. at  
14 658 (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S.  
15 29, 43 (1983)).

16       “To determine whether an agency violated the arbitrary and capricious standard, [the] court  
17 must determine whether the agency articulated a rational connection between the facts found and  
18 the choice made.” *Ariz. Cattle Growers' Ass'n v. U.S. Fish & Wildlife*, 273 F.3d 1229, 1236 (9th  
19 Cir. 2001). In order for the court to confirm the agency’s decision as rationally connected to the  
20 facts, the agency must have considered “substantial evidence” that supported its decision. *See*  
21 *Nakamoto v. Ashcroft*, 363 F.3d 874, 881-82 (9th Cir. 2004) (applying substantial evidence  
22 standard in evaluating marriage fraud in immigration case). “To reverse under the substantial  
23 evidence standard, the evidence must be so compelling that no reasonable factfinder could fail to  
24 find the facts were as the [plaintiff] alleged.” *Singh v. Reno*, 113 F.3d 1512, 1514 (9th Cir. 1997).

25       Turning to the last clause of section 706(2)(A), “[w]hen ‘reviewing an agency’s statutory  
26 interpretation under the APA’s ‘not in accordance with law’ standard,’ *see* 5 U.S.C. § 706(A)(2),”  
27 courts apply the two-step framework established in *Chevron U.S.A., Inc. v. Natural Resources*  
28 *Defense Council*, 467 U.S. 837 (1984). *Nw. Envtl. Advocates v. U.S. E.P.A.*, 537 F.3d 1006, 1014

1 (9th Cir. 2008). The *Chevron* two-step analysis focuses on Congressional intent:

2 When a court reviews an agency’s construction of the statute which it  
3 administers, it is confronted with two questions. First, always, is the  
4 question whether Congress has directly spoken to the precise question  
5 at issue. If the intent of Congress is clear, that is the end of the matter;  
6 for the court, as well as the agency, must give effect to the  
unambiguously expressed intent of Congress. If, however, the court  
determines Congress has not directly addressed the precise question  
at issue, . . . the question for the court is whether the agency’s answer  
is based on a permissible construction of the statute.

7 467 U.S. at 842-43 (footnotes omitted). “Stated simply, if a statute is unambiguous, an agency’s  
8 regulation must adhere to the statute’s explicit intent. If a statute is ambiguous, the court will  
9 defer to an agency’s regulation implementing the statute if the agency’s interpretation of the  
statute is reasonable.” *Gonzales & Gonzales Bonds & Ins. Agency Inc. v. U.S. Dep’t of Homeland*  
10 *Sec.*, 913 F. Supp. 2d 865, 874 (N.D. Cal. 2012) (citations omitted). A permissible interpretation  
11 is “rational and consistent with [the statutory scheme].” *Local Joint Exec. Bd. of Las Vegas v.*  
12 *NLRB*, 657 F.3d 865, 870 (9th Cir. 2011) (citing *United Food & Commercial Workers Union v.*  
13 *NLRB*, 307 F.3d 760, 766 (9th Cir. 2002) (en banc)).

15 **B. Review Under 5 U.S.C. § 706(2)(C)**

16 Under 5 U.S.C. § 706(2)(C), a court must “set aside agency action” that is “in excess of  
17 statutory jurisdiction, authority, or limitations, or short of statutory right.” Under this provision,  
18 courts also apply the two-step *Chevron* test. *Nw. Envtl. Advocates v. U.S. E.P.A.*, 537 F.3d 1006,  
19 1014 (9th Cir. 2008).

20 **IV. DISCUSSION**

21 Plaintiffs advance two primary arguments. First, they argue that Congress did not give  
22 USCIS the authority to revoke U nonimmigrant status. Therefore, 8 C.F.R. § 214.14(h)(2), which  
23 purports to permit such revocation, is *ultra vires*. See *City of Arlington, Texas v. FCC*, 569 U.S.  
24 290, 297-98 (2013) (agencies’ “power to act and how they are to act is authoritatively prescribed  
25 by Congress, so that when they act improperly, no less than when they act beyond their  
jurisdiction, what they do is *ultra vires*.”). Accordingly, Plaintiffs assert that USCIS’s revocation  
26 of Chaparro Navarro’s U nonimmigrant status constituted agency action that was both “not in  
27 accordance with law” and “in excess of statutory jurisdiction [and] authority” under sections  
28 of the statute.

1 706(2)(A) and (C).

2 Second, Plaintiffs argue that even if USCIS had authority to revoke Chaparro Navarro's  
3 status, the means by which it did so was arbitrary and capricious under section 706(2)(A).  
4 Plaintiffs do not challenge the merits of the revocation decision. [Docket No. 74 (Pls.' Opp'n) 1.]

5 In response, Defendants assert that USCIS has authority to revoke U nonimmigrant status  
6 and that its regulation regarding revocation is entitled to deference under *Chevron*. They further  
7 argue that USCIS properly revoked Chaparro Navarro's approved petition for U nonimmigrant  
8 status.

9 **A. Whether USCIS Has Authority to Revoke Chaparro Navarro's U Nonimmigrant  
10 Status**

11 In revoking Chaparro Navarro's U nonimmigrant status, USCIS relied on 8 C.F.R. §  
12 214.14(h)(2), which governs revocation on notice.<sup>4</sup> The parties disagree about whether the  
13 regulation is authorized by statutory text. They also dispute the degree of deference, if any, that it  
14 should be accorded. Although Defendants appear to concede that no statute specifically addresses  
15 revocation of U visas, they argue that DHS enacted the revocation regulation at issue in  
16 accordance with two statutory provisions, 8 U.S.C. §§ 1184(a)(1) and 1103(a)(3). *See* Defs.' Mot.  
17 12. They further argue that DHS's regulations are entitled to deference under *Chevron*. Defs.'  
18 Mot. 12-17. In response, Plaintiffs assert that *Chevron* deference does not apply here because  
19 DHS itself has recognized that its authority to enact a revocation regulation is implicit rather than  
20 explicit. Pls.' Opp'n 8-9.

21 The Supreme Court explained that "*Chevron* deference . . . is not accorded merely because  
22 the statute is ambiguous and an administrative official is involved. To begin with, the rule must be  
23 promulgated pursuant to authority Congress has delegated to the official." *Gonzales v. Oregon*,  
24 546 U.S. 243, 258 (2006). "Deference in accordance with *Chevron* . . . is warranted only 'when it

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26 <sup>4</sup> 8 C.F.R. § 214.14(h) also includes a provision for automatic revocation of an approved petition  
27 for U nonimmigrant status. *See* 8 C.F.R. § 214.14(h)(1) (providing that "[a]n approved petition  
28 for U-1 nonimmigrant status will be revoked automatically if . . . the beneficiary of the approved  
petition notifies the USCIS office that approved the petition that he or she will not apply for  
admission to the United States and, therefore, the petition will not be used."). Plaintiffs do not  
challenge this provision.

1 appears that Congress delegated authority to the agency generally to make rules carrying the force  
2 of law, and that the agency interpretation claiming deference was promulgated in the exercise of  
3 that authority.”” *Id.* at 255-56 (quoting *United States v. Mead Corp.*, 533 U.S. 218, 226-27  
4 (2001)).

5 Therefore, the first question here is whether DHS promulgated the revocation regulation  
6 pursuant to authority delegated to it by Congress. “The starting point for this inquiry is, of course,  
7 the language of the delegation provision itself.” *Id.* at 258.

8 DHS explained the basis for its implicit authority to promulgate the revocation regulation  
9 as follows:

10 Revocation authority flows from section 214(a)(1) of the INA, 8  
11 U.S.C. 1184(a)(1). This provision authorizes the Secretary of  
12 Homeland Security to prescribe, by regulation, the time and  
conditions of admission of any nonimmigrant. *Implicit in this*  
*authority is the authority to prescribe the conditions under which*  
*nonimmigrant status may be revoked.*

13 Department of Homeland Security; New Classification for Victims of Criminal Activity;  
14 Eligibility for “U” Nonimmigrant Status, Interim Rule, 72 Fed. Reg. 53014-01, 53030 (Sept. 17,  
15 2007) (emphasis added). Defendants argue that DHS’s explanation reflects “a straightforward  
16 reading” of the language of 8 U.S.C. § 1184, which states in relevant part:  
17

18 The admission to the United States of any alien as a nonimmigrant  
19 shall be *for such time and under such conditions as the Attorney*  
*General may by regulations prescribe*, including when he deems  
20 necessary the giving of a bond with sufficient surety in such sum and  
containing such conditions as the Attorney General shall prescribe, to  
21 insure that at the expiration of such time or upon failure to maintain  
the status under which he was admitted, or to maintain any status  
22 subsequently acquired under section 1258 of this title, such alien will  
depart from the United States. . . .

23 8 U.S.C.A. § 1184(a)(1)<sup>5</sup> (emphasis added); Defs.’ Mot. 15. Defendants also cite 8 U.S.C. §  
24 1103(a)(3) as further support for DHS’s authority to issue the revocation regulation. That statute  
25 provides that the Secretary of Homeland Security “shall establish such regulations; prescribe such

26 <sup>5</sup> The parties agree that the statute’s reference to the “Attorney General” should be interpreted as a  
27 reference to the Secretary of Homeland Security. *See* Pls.’ Mot. 10 n.2; Defs.’ Mot. 11 n.1 (citing  
28 *Buddhi v. Holder*, 344 Fed. Appx. 280, 284 n.1 (7th Cir. 2009) (explaining that the Homeland  
Security Act of 2002 transferred the responsibilities described in 8 U.S.C. § 1184(a)(1) to the  
Secretary of Homeland Security)).

1 forms of bond, reports, entries, and other papers; issue such instructions; and perform such other  
2 acts as he deems necessary for carrying out his authority under the provisions of this chapter.” 8  
3 U.S.C. § 1103(a)(3).

4 In response, Plaintiffs argue that the Ninth Circuit foreclosed DHS’s ability to rely on a  
5 statutory grant of implicit authority. They cite *Gorbach v. Reno*, 219 F.3d 1087, 1092-93 (9th Cir.  
6 2000) (en banc), and *Nijjar v. Holder*, 689 F.3d 1077, 1084 (9th Cir. 2012).

7 In *Gorbach*, the Ninth Circuit considered “whether the power to confer citizenship through  
8 the process of naturalization necessarily includes the power to revoke that citizenship”; it  
9 concluded that it does not. 219 F.3d at 1089. *Gorbach* examined the language, structure and  
10 history of the two statutes at issue. In 1990, Congress amended the Immigration and Nationality  
11 Act to confer “sole authority to naturalize persons as citizens of the United States . . .  
12 upon the Attorney General.” *See id.* (citing 8 U.S.C. § 1421(a)). Prior to the amendment, new  
13 citizens had been naturalized in court. *Gorbach*, 219 F.3d at 1089. A separate statute entitled  
14 “Revocation of Naturalization,” 8 U.S.C. § 1451, provides that “United States attorneys shall  
15 institute actions to revoke naturalization, in appropriate circumstances, in United States District  
16 Courts.” *Id.* at 1090 (citing 8 U.S.C. § 1451(a)). Several years after the 1990 amendment, the  
17 Attorney General issued regulations governing revocation of naturalization. The regulations  
18 included a provision for administrative denaturalization by which, “[o]n its own motion, the  
19 [Immigration and Naturalization] Service may reopen a naturalization proceeding and revoke  
20 naturalization’ in various circumstances” which “overlap the circumstances for which the Attorney  
21 General must bring actions in district court to revoke naturalizations.” *Id.* at 1091 (quoting 8  
22 C.F.R. § 340.1). A group of citizens who had been served with notices of intent to revoke their  
23 naturalization sought to enjoin the Attorney General from proceeding under the new regulations.  
24 The district court granted a preliminary injunction and the government appealed. *Id.* at 1091.

25 The Ninth Circuit began its analysis by invoking the principle that “[a]n agency may not  
26 confer power upon itself.” *Id.* at 1092-93 (quotation omitted). Therefore, it looked to “the  
27 relevant statutes [for] some express or implied delegation of authority to the Attorney General to  
28 revoke the citizenship of a naturalized American citizen.” *Id.* at 1093. The court first addressed

1 the government’s argument that the regulation was entitled to *Chevron* deference. Noting that  
2 “*Chevron* deference ‘is premised on the theory that a statute’s ambiguity constitutes an implicit  
3 delegation from Congress to the agency to fill in the statutory gap,’” the court found that the  
4 theory had no application “because the context [of the statute at issue] leaves no room to infer an  
5 implicit delegation, so there is no room for *Chevron* deference.” *Id.* The court held that Congress  
6 had expressly delegated to the Attorney General the “authority to naturalize” citizens, but not the  
7 authority to denaturalize them. Indeed, section 1451 supports the opposite proposition, for it  
8 contains an express statutory procedure for denaturalization through which “United States  
9 attorneys are supposed to bring proceedings ‘in any district court.’” *Id.* at 1093-94 (citations  
10 omitted). Accordingly, the statute was not “‘silent’ with respect to ‘the specific issue’ of  
11 denaturalization.” *Id.* at 1093. “Read in context,” the court explained, “the statute is unambiguous  
12 in *not* conferring upon the Attorney General the power to denaturalize citizens administratively.”  
13 *Id.* (emphasis in original).

14 Ultimately, the *Gorbach* court concluded that Congress had “not ‘explicitly left a gap for  
15 the agency to fill,’ or made an ‘implicit’ delegation to an agency, which would require *Chevron*  
16 deference.” *Id.* (quoting *Chevron*, 467 U.S. at 843-44). The court noted that “[t]he only statutory  
17 language from which the Attorney General infers a power to denaturalize is a saving clause which  
18 states: “[n]othing in this section shall be regarded as limiting, denying, or restricting the power of  
19 the Attorney General to correct, reopen, alter, modify, or vacate an order naturalizing the person.”  
20 *Id.* at 1094 (quoting 8 U.S.C. § 1451(h)). The court rejected the Attorney General’s reliance on  
21 that language, holding that “[a] saving clause does not create anything; it merely preserves from  
22 repeal what is already there . . . [u]nder the saving clause, what authority the Attorney General has,  
23 she keeps, but it does not give her more.” *Id.* Observing that “[t]he heart of the Attorney  
24 General’s argument is that the power to denaturalize is ‘inherent’ in the power to naturalize,” the  
25 court held that “[t]here is no reason why that should be so. There is no principle that what one can  
26 do, one can undo.” *Id.* at 1095. Instead, wrote the court, “[w]hether the Attorney General can  
27 undo what she has the power to do, naturalize citizens, depends on whether Congress said she  
28 could.” *Id.*

1           Accordingly, the court held that “the new regulations for administrative denaturalization  
2        were promulgated without authority from Congress”:

3           Congress has provided one way to revoke the citizenship of a  
4        naturalized American citizen: that is for a United States Attorney to  
5        file a petition in a United States District Court. There is no statutory  
6        warrant for a second way, whereby the Immigration and  
7        Naturalization Service would revoke a person’s citizenship  
8        administratively.

9           *Id.* at 1099.

10          Twelve years after its decision in *Gorback*, the Ninth Circuit issued *Nijjar*, in which it  
11        considered whether DHS has authority to terminate a nonresident’s asylum status. In 1996, the  
12        Immigration and Naturalization Service (“INS”) granted asylum to Nijjar, who then brought his  
13        wife and child into the United States as derivative asylees. 689 F.3d at 1078. In 2003 the INS  
14        ceased to exist due to a restructuring of the immigration system, and most of its functions were  
15        transferred to DHS, which in turn charged its agency, USCIS, with administering asylum  
16        applications through its asylum officers. The Executive Office of Immigration Review (“EOIR”)  
17        also continued to administer asylum applications through immigration judges. *Id.* at 1078-79. In  
18        late 2003, Nijjar was notified that the INS intended to terminate his asylum status for fraud, even  
19        though that agency no longer existed. In 2004, after Nijjar failed to appear for a termination  
20        interview, USCIS sent a notice informing him that it had terminated his asylum status. *Id.* at 1079.  
21        It then placed Nijjar and his family in removal proceedings. Nijjar moved to terminate the  
22        proceedings on the ground that USCIS lacked authority to terminate his asylum status, and that  
23        only the Attorney General has such authority. *Id.* at 1080.

24          The Ninth Circuit held that DHS lacked authority to terminate asylum status through  
25        USCIS. *Id.* at 1081. In so doing, it found that “Congress did not confer the authority to terminate  
26        asylum on [DHS]. Congress conferred that authority exclusively on the Department of Justice.”  
27        *Id.* at 1082. 8 U.S.C. § 1158 provides that “the Secretary of Homeland Security **or** the Attorney  
28        General may **grant** asylum . . . .” *Id.* (emphasis in original) (citing 8 U.S.C. § 1158(b)(1)(A)).  
However, “[t]he ‘termination of asylum’ subsection of the statute says that asylum ‘may be  
terminated if the Attorney General determines’ that any of several conditions are met.” *Id.*

1 (quoting 8 U.S.C. § 1158(c)(2)). The court held that *Chevron* deference thus was not applicable  
2 “because Congress did not confer discretion on [DHS] to issue regulations or interpret the statute  
3 insofar as it addresses termination of asylum.” Instead, “Congress said that termination of asylum  
4 is within the authority of the ‘Attorney General.’” *Id.* at 1083. Accordingly, as “Congress spoke  
5 directly to the precise question of who can terminate asylum,” the court concluded that it could not  
6 apply *Chevron* deference. *Id.*

7 *Nijjar* also rejected the government’s argument “that what [DHS] can grant it implicitly  
8 can take away,” citing *Gorbach*. *Id.* at 1084. The court explained that “Congress conferred  
9 authority on both the Attorney General and [DHS] to give asylum, but only on the Attorney  
10 General to take it away.” *Id.* *Nijjar* concluded that the regulations pursuant to which DHS  
11 terminated asylum status were *ultra vires*. *Id.* at 1085-86.

12 Here, Plaintiffs argue that *Gorbach* and *Nijjar* foreclose any reliance by Defendants on a  
13 purported statutory grant of implicit authority to promulgate the regulation at issue in this case.  
14 They argue that “[t]here is simply no room for the agency to claim ‘implicit authority’ when  
15 Congress has chosen not to provide express statutory authority.” Pls.’ Mot. 10.

16 At the hearing, Plaintiffs clarified and narrowed their position. They do not assert that an  
17 administrative agency cannot promulgate a regulation in the absence of express authority to do so.  
18 Such an argument would clearly contradict the holding in *Chevron* that “[t]he power of an  
19 administrative agency to administer a congressionally created . . . program necessarily requires the  
20 formulation of policy and the making of rules to fill any gap left, *implicitly or explicitly*, by  
21 Congress.” *Chevron*, 467 U.S. at 843 (emphasis added). The Supreme Court recognized that  
22 “[s]ometimes the legislative delegation to an agency on a particular question is implicit rather than  
23 explicit.” *Id.* at 844. The Ninth Circuit recognized this in *Gorbach*, beginning its analysis of the  
24 regulation at issue “by seeking in the relevant statutes some express *or implied* delegation of  
25 authority to the Attorney General to revoke the citizenship of a naturalized American citizen.”  
26 *Gorbach*, 219 F.3d at 1093 (emphasis added).

27 Instead, at oral argument, Plaintiffs asserted that *Gorbach* and *Nijjar* rejected a “species”  
28 of implied authority. According to Plaintiffs, the Ninth Circuit has foreclosed DHS from asserting

that it had implicit authority to issue the revocation regulation based solely on its power to grant nonimmigrant status.

If that were the sole basis for DHS’s authority, the court would agree with Plaintiffs on this point, for “[t]here is no general principle that what one can do, one can undo.” *Gorbach*, 219 F.3d at 1095. However, the circumstances at issue here are distinguishable from those in *Gorbach* and *Nijjar*. This case does not involve issuance of regulations regarding revocation of a status where Congress conferred the authority to revoke that status on a different agency. Nor does DHS assert authority to issue the revocation regulation based solely on its congressionally delegated power to grant nonimmigrant status. Instead, DHS relies on specific statutory provisions in 8 U.S.C. §§ 1184 and 1103 as the sources of delegated authority to issue the revocation regulation. Accordingly, the court must examine those statutes to determine whether the revocation regulation is *ultra vires*.

“In determining whether an agency regulation is *ultra vires*, [courts] apply the two-step *Chevron* analysis.” *Garfias-Rodriguez v. Holder*, 702 F.3d 504, 525 (9th Cir. 2012) (citing *Mejia v. Gonzales*, 499 F.3d 991, 996 (9th Cir. 2007)). At the first step, the court must ask “whether Congress has directly spoken to the precise question at issue,” that is, whether Congress conferred authority to revoke U nonimmigrant status on DHS or on any agency. *See id.* at 512 (quoting *Chevron*, 467 U.S. at 842). In their briefing, Defendants appeared to argue that Congress expressly granted DHS the authority to issue the revocation regulation. Defs.’ Mot. 13-14. However, at oral argument, defense counsel conceded that the words “revoke” or “revocation” do not appear in 8 U.S.C. §§ 1184 and 1103.<sup>6</sup> The court concludes that Congress has not directly spoken to the question of whether DHS possesses authority to revoke U nonimmigrant status. Neither section 1184, entitled “Admission of nonimmigrants,” nor section 1103, entitled “Powers and duties of the Secretary [of Homeland Security], the Under Secretary, and the Attorney General,” addresses revocation of U nonimmigrant status. Similarly, 8 U.S.C. § 1101, which

<sup>6</sup> Defense counsel also failed to reconcile the purported existence of an express grant of authority with DHS's statement during rulemaking that it was relying on an *implicit* grant of authority to issue the regulation.

1 defines U and nonimmigrant statuses, does not address revocation of any nonimmigrant status.<sup>7</sup>

2 As Congress did not expressly confer authority on DHS to revoke U visas, the court  
3 proceeds to *Chevron* step two, which requires the court to “assess ‘whether the agency’s  
4 [regulation] is based on a permissible construction of the statute.’” *Mejia*, 499 F.3d at 996  
5 (quoting *Chevron*, 467 U.S. at 843). “In making this determination, [the court] ‘need not conclude  
6 that the agency construction was the only one it permissibly could have adopted . . . , or even the  
7 reading the court would have reached if the question initially had arisen in a judicial proceeding.’”  
8 *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 492 (9th Cir. 2007) (quoting *Chevron*, 467 U.S. at  
9 843 n.11). “Rather, ‘Congress, when it left ambiguity in a statute meant for implementation by an  
10 agency, understood that the ambiguity would be resolved, first and foremost, by the agency, and  
11 desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity  
12 allows.’” *Id.* (quoting *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967,  
13 982 (2005) (quotation omitted)).

14 In arguing that the revocation regulation is based on a permissible statutory construction  
15 that is entitled to *Chevron* deference, Defendants rely on the language italicized below in 8 U.S.C.  
16 § 1184:

17 *The admission to the United States of any alien as a nonimmigrant  
18 shall be for such time and under such conditions as the [Secretary of  
19 Homeland Security] may by regulations prescribe*, including when he  
20 deems necessary the giving of a bond with sufficient surety in such  
21 sum and containing such conditions as the Attorney General shall  
22 prescribe, to insure that at the expiration of such time or upon failure  
23 to maintain the status under which he was admitted, or to maintain  
24 any status subsequently acquired under section 1258 of this title, such  
25 alien will depart from the United States. . . .

26 8 U.S.C. § 1184(a)(1) (emphasis added). In addition, Defendants point to 8 U.S.C. § 1103(a)(3),

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27 <sup>7</sup> The only reference to revocation in these statutes is in 8 U.S.C. § 1184(g)(3), which does not  
28 apply here. It addresses visas issued under 8 U.S.C. § 1101(a)(15)(H)(i)(b) to noncitizens  
“coming temporarily to the United States to perform” certain services. Section 1184(g) sets forth  
the total number of noncitizens per fiscal year who may be provided nonimmigrant status under  
that provision of section 1101, and states that if an individual who was granted such status “is  
found to have been issued such visa . . . by fraud or willfully misrepresenting a material fact and  
such visa or nonimmigrant status is revoked, then one number shall be restored to the total number  
of” noncitizens who may be issued visa in the fiscal year in which the petition is revoked. 8  
U.S.C. § 1184(g)(3).

1 which provides that the Secretary of Homeland Security “*shall establish such regulations;*  
2 prescribe such forms of bond, reports, entries, and other papers; issue such instructions; and  
3 perform such other acts *as he deems necessary for carrying out his authority under the provisions*  
4 *of this chapter.*” 8 U.S.C. § 1103(a)(3) (emphasis added).

5 Read together, sections 1184(a)(1) and 1103(a)(3) reasonably can be interpreted as  
6 authorizing the issuance of regulations that address the conditions of admission to the United  
7 States as a nonimmigrant, as well as the length of time of admission. From there, the court must  
8 specifically determine whether the regulation setting forth a procedure for *revoking* approved  
9 petitions for U nonimmigrant status “is based on a permissible construction of the statute[s]” and  
10 is entitled to deference. *See Chevron*, 467 U.S. at 843. The court concludes that it is. Section  
11 1184(a)(1) confers authority on the Secretary of Homeland Security to promulgate regulations  
12 governing the time and conditions of nonimmigrant admissions, and section 1103(a)(3) authorizes  
13 the Secretary to establish regulations “necessary for carrying out his authority.” The phrase “for  
14 such time” in section 1184(a)(1) can reasonably be interpreted to mean that DHS has authority to  
15 limit the amount of time during which a noncitizen may be admitted as a nonimmigrant. The  
16 statute further provides that DHS may set “conditions” for admission as a nonimmigrant. The  
17 requirement of maintaining eligibility for U nonimmigrant status reasonably can be construed as  
18 one such condition. The court therefore concludes that a regulation addressing revocation of U  
19 nonimmigrant status that is promulgated pursuant to the agency’s statutory authority to address the  
20 time and conditions under which a noncitizen is admitted is not “arbitrary, capricious, or  
21 manifestly contrary to the statute[s].” *See Ruiz-Diaz v. United States*, 618 F.3d 1055, 1060 (9th  
22 Cir. 2010) (“When, as here, Congress has expressly conferred authority on the agency to  
23 implement a statute by regulation, the regulations have ‘controlling weight unless they are  
24 arbitrary, capricious, or manifestly contrary to the statute.’” (quoting *Chevron*, 467 U.S. at 843-  
25 44)). Accordingly, 8 C.F.R. § 214.14(h)(2) is entitled to *Chevron* deference and is not *ultra vires*  
26 to the governing statutes, 8 U.S.C. §§ 1184(a)(1) and 1103(a)(3). *See United States v. Dang*, 488  
27 F.3d 1135, 1141 (9th Cir. 2007) (holding that DHS’s regulation was “not beyond the agency’s  
28 statutory mandate[,] . . . is entitled to *Chevron* deference and, therefore, is not *ultra vires* to the

1 governing statute”).

2           **B. Whether the Means by Which USCIS Revoked Chaparro Navarro’s Status**  
3           **was Arbitrary and Capricious**

4           Plaintiffs raise three bases for their argument that USCIS acted arbitrarily and capriciously  
5           in revoking Chaparro Navarro’s U nonimmigrant status. First, they challenge the legality of the  
6           agency’s unexplained decision to revisit its grant of nonimmigrant status. Next, they argue that  
7           the revocation based on the lack of qualifying criminal activity cannot stand. Finally, they  
8           contend that the agency violated its own regulations by basing its final decision on a ground not  
9           originally stated in the notice of intent to revoke.

10           Under the APA, a court may “hold unlawful and set aside [an] agency action” if it was  
11           “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[.]” 5 U.S.C.  
12           § 706(2)(A). “[A]n agency’s action must be upheld, if at all, on the basis articulated by the agency  
13           itself.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 50  
14           (1983). “Federal administrative agencies are required to engage in ‘reasoned decisionmaking.’”  
15           *Michigan v. E.P.A.*, 135 S. Ct. 2699, 2706 (2015) (quoting *Allentown Mack Sales & Service, Inc.*  
16           v. *NLRB*, 522 U.S. 359, 374 (1998)). “Not only must an agency’s decreed result be within the  
17           scope of its lawful authority, but the process by which it reaches that result must be logical and  
18           rational.” *Id.* (quoting *Allentown*, 522 U.S. at 374). An agency “must examine the relevant data  
19           and articulate a satisfactory explanation for its action including a ‘rational connection between the  
20           facts found and the choice made.’” *Motor Vehicle Mfrs.*, 463 U.S. at 43 (quotation omitted).  
21            “[A]gency action is lawful only if it rests ‘on a consideration of the relevant factors.’” *Michigan*,  
22           135 S. Ct. at 2706 (quoting *Motor Vehicle Mfrs.*, 463 U.S. at 43).

23           **1. USCIS’s Decision to Reexamine Chaparro Navarro’s Status**

24           In its September 16, 2014 notice of intent to revoke, USCIS stated that “[o]n October 1,  
25           2012, your petition was approved. It has now come to the attention of USCIS that the approval  
26           was in error.” CNAR 353. USCIS cited the revocation regulation, which provides that an  
27           approved petition for U nonimmigrant status can be revoked where “approval was in error,” 8  
28           C.F.R. § 214.14(h)(2)(i)(B), then stated that “the supporting evidence does not show you are a

1 victim of felonious assault[.]” CNAR 354. Both the November 8, 2016 and November 30, 2018  
2 AAO decisions denying Chaparro Navarro’s appeal set forth this same reason. The later AAO  
3 decision added the justification that Chaparro Navarro did not suffer “substantial [physical or  
4 mental] abuse as a result of the crime. *See* CNAR 1-14, 135-42.

5 Plaintiffs do not challenge the merits of the agency’s decision. Instead, they question  
6 USCIS’s right to revisit its grant of nonimmigrant status to Chaparro Navarro. According to  
7 Plaintiffs, “[i]t is surely arbitrary and capricious as a matter of process to reopen a long-ago  
8 decided matter without providing a reason for initially deciding to revisit the approval.” Pls.’ Mot.  
9 14.

10 Defendants respond that “[t]here is no requirement, and Plaintiffs point to none, that the  
11 agency must provide an explanation as to how or why it became aware of its prior errors.” Defs.’  
12 Mot. 19.

13 The parties did not brief this issue in any detail. Therefore, the court ordered them to  
14 submit supplemental briefing “addressing USCIS’s power to reexamine Chaparro Navarro’s  
15 petition for U nonimmigrant status after nearly two years and without providing a reason for  
16 reexamination.” In particular, the court directed the parties to discuss Judge Thomas’s statement  
17 in his concurring opinion in *Gorbach* that “[e]very tribunal, judicial or administrative, has some  
18 power to correct its own errors or otherwise appropriately to modify its judgment, decree, or  
19 error,” and that “[i]n the administrative context, this right is generally limited to ‘a short period  
20 after the making of the decision and before an appeal has been taken or other rights vested.’”  
21 Minute Order (citing *Gorbach*, 219 F.3d at 1102 (Thomas, J. concurring)). The parties timely  
22 filed the requested briefing. [Docket Nos. 79 (Defs.’ Supp. Br.), 80 (Pls.’ Supp. Br.), 81 (Defs.’  
23 Supp. Reply), 82 (Pls.’ Supp. Reply).]

24 In their supplemental briefing, Defendants argue for the first time that “[a]s a general  
25 matter, an agency has the inherent power to correct errors,” citing Judge Thomas’s concurring  
26 opinion in *Gorbach* and two D.C. Circuit cases holding that “administrative agencies are assumed  
27 to possess at least some inherent authority to revisit their prior decisions, at least if done in a  
28 timely fashion.” Defs.’ Supp. Br. 2 (citing *Ivy Sports Medicine, LLC v. Burwell*, 767 F.3d 81, 86

1 (D.C. Cir. 2014) and *Albertson v. FCC*, 182 F.2d 397, 399 (D.C. Cir. 1950)). According to  
2 Defendants, the power to correct “is especially clear in cases of legal error,” and USCIS acted  
3 reasonably in considering revocation during the period that Chaparro Navarro had been granted U  
4 nonimmigrant status. *Id.* at 4-5.

5 As an initial matter, Defendants’ original briefing does not assert that USCIS revisited  
6 Chaparro Navarro’s status pursuant to its inherent authority to correct errors. Defendants  
7 inappropriately use the opportunity of supplemental briefing to raise new arguments that could and  
8 should have been raised in their original papers. Defendants may not do so; their new argument is  
9 rejected on that basis.

10 In any event, the Ninth Circuit has never expressly held that agencies have the inherent  
11 power to reconsider their own decisions. There is tension between such a principle and the  
12 majority opinion in *Gorbach*, in which the court held that “[a]n agency may not confer power  
13 upon itself.” See *Gorbach*, 219 F.3d at 1092-93, 1095 (“There is no general principle that what  
14 one can do, one can undo.”). Defendants acknowledge this tension but do not attempt to  
15 harmonize their position with *Gorbach*. Instead, they simply assert that the facts of *Gorbach* are  
16 different from those in this case. Defs.’ Supp. Br. 1 n.1.<sup>8</sup>

17 Even assuming USCIS has the inherent authority to reconsider its decisions, such authority  
18 would not be without limit. Courts that have held that administrative agencies possess the  
19 inherent authority to reconsider their decisions have also held that “an agency may undertake such  
20 reconsideration only if it does so within a reasonable time period and affords the claimant proper  
21 notice of its intent to reconsider the decision.” *Dun & Bradstreet v. U.S. Postal Serv.*, 946 F.2d  
22 189, 193 (2d Cir. 1991) (citing *Bookman v. United States*, 453 F.2d 1263, 1265 (Ct. Cl. 1972));  
23 *Macktal v. Chao*, 286 F.3d 822, 826 (5th Cir. 2002). “This policy balances the desirability of  
24 finality against the general public interest in attaining the correct result in administrative cases.”  
25 *Dun & Bradstreet*, 946 F.2d at 193-94. “What is a short and reasonable period will vary with each

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27 <sup>8</sup> Plaintiffs argue that the government waived the inherent authority argument by failing to raise it  
28 in their cross-motion or opposition to Plaintiffs’ motion. They also assert that the principle of  
inherent authority is irreconcilable with *Gorbach*. Pls.’ Supp. Reply 2.

case, but absent unusual circumstances, the time period would be measured in weeks, not years.”  
*Cabo Distributing Co., Inc. v. Brady*, 821 F. Supp. 601, 612 (N.D. Cal. 1992) (quoting *Gratehouse v. United States*, 512 F.2d 1104, 298 (Ct. Cl. 1975)). In *Cabo Distributing*, the court held that the Bureau of Alcohol, Tobacco and Firearms lacked implicit authority to revoke a certificate of label approval three years after its initial approval, noting the “absence of any showing of ‘unusual circumstances.’” 821 F. Supp. at 613 (citing *Bookman*, 453 F.2d at 1265, and *Gratehouse*, 512 F.2d at 298).

Additionally, the reasonableness of an agency’s decision to correct an alleged error “must be judged in light of the time that has elapsed and the resulting reliance interests at stake.”

*Solenex, LLC v. Jewell*, 334 F. Supp. 3d 174, 182 (D.D.C. 2018) (holding agency’s decision to cancel oil and gas lease over 30 years after granting it based on purported error was “arbitrary and capricious” agency action, as was agency’s failure to consider the plaintiff’s reliance interests), *appeal filed*, Nov. 28, 2018 (Nos. 18-5343, 18-5345). See also *Prieto v. United States*, 655 F. Supp. 1187, 1191-92 (D.D.C. 1987) (holding that agency’s decision to rescind land’s trust status nine months after initial decision violated the APA and noting plaintiff’s actions in reliance on the initial grant of trust status). The reason for reconsidering an earlier decision also bears on the reasonableness of the agency’s reconsideration; in *Solenex*, the court held that “[a]n unreasonable amount of time to *correct* an alleged agency error, especially where the record shows that error was readily discoverable from the beginning, violates the APA.” *Id.* at 182 (emphasis in original).

Here, USCIS granted Chaparro Navarro’s petition for U nonimmigrant status on October 1, 2012. Almost two years later on September 16, 2014, USCIS issued its notice of intent to revoke her status, stating only that “the approval was in error.” CNAR 353-55. While Defendants acknowledge that reconsideration of an agency’s decision “should take place within a reasonable amount of time following the initial decision,” Defs.’ Supp. Br. 4, they do not identify the existence of any “unusual circumstances” that would justify a nearly two-year delay in notifying Chaparro Navarro of its intent to revoke her status based on error. They also make no attempt to argue that the error was not readily discoverable. In fact, Defendants are notably silent as to why USCIS decided to revisit its initial grant of U nonimmigrant status to Chaparro Navarro. In sum,

1 Defendants offer no reason or argument for waiting two years before deciding to revoke the  
2 original grant of status. Instead, they make the sweeping assertion that USCIS should be  
3 permitted to revoke a petition for error at any point during the entire four-year period of U  
4 nonimmigrant status, regardless of the reason for revocation. Defs.’ Supp. Br. 5.

5 Defendants’ position is untenable, as it ignores both “the desirability of finality in an  
6 agency’s decision,” *Cabo Distributing*, 821 F. Supp. at 612 (quotation omitted), and the reliance  
7 interests at issue when U nonimmigrant status is granted. *See Solenex*, 334 F. Supp. 3d at 183-84  
8 (“this ‘wait and see’ approach—though convenient from a policy perspective—wreaks havoc on  
9 the interests of individual leaseholders.”). The reliance interests in this case are particularly  
10 heightened, since an individual with U nonimmigrant status may seek and obtain lawful  
11 permanent resident status after three years of continuous physical presence in the United States.  
12 *See* 8 U.S.C. § 1255(m)(1). As Plaintiffs point out, under Defendants’ theory, “no U  
13 nonimmigrant could ever rest easy because at any time her status could be changed.” Pls.’ Supp.  
14 Reply 3. In sum, the court concludes that USCIS’s revocation of Chaparro Navarro’s status nearly  
15 two years after granting it due to an alleged error constituted “arbitrary and capricious” agency  
16 action. Because the court finds that USCIS violated the APA on this ground, it need not reach  
17 Plaintiffs’ remaining arguments.

18           **C.     Whether USCIS is Required to Consider Morales’s Derivative Petition**

19 Finally, Plaintiffs assert that because USCIS should not have revoked Chaparro Navarro’s  
20 U nonimmigrant status, it must consider her father’s derivative petition. They ask for mandamus  
21 relief under 28 U.S.C. § 1361 in the form of an order directing USCIS to adjudicate Morales’s  
22 petition.

23       28 U.S.C. § 1361 is the federal mandamus statute. It provides that “[t]he district courts  
24 shall have original jurisdiction of any action in the nature of mandamus to compel an officer or  
25 employee of the United States or any agency thereof to perform a duty owed to the plaintiff.”  
26 Mandamus relief is an extraordinary remedy. It is “only available to compel an officer of the  
27 United States to perform a duty if (1) the plaintiff’s claim is clear and certain; (2) the duty of the  
28 officer ‘is ministerial and so plainly prescribed as to be free from doubt’; and (3) no other

1 adequate remedy is available.” *Fallini v. Hodel*, 783 F.2d 1343, 1345 (9th Cir. 1986) (internal  
2 citations and quotations omitted).

3 In opposition, Defendants argue that Plaintiffs cannot meet the first two requirements for  
4 mandamus relief because USCIS had authority to revoke Chaparro Navarro’s U nonimmigrant  
5 status and the decision “was amply supported by the administrative record and sound reasoning.”  
6 Defs.’ Opp’n 22. In other words, Defendants oppose Plaintiffs’ request for mandamus relief on  
7 the ground that the revocation of Chaparro Navarro’s status was proper. They offer no other  
8 argument. As discussed above, the court concludes that the revocation of Chaparro Navarro’s U  
9 nonimmigrant status constituted “arbitrary and capricious” agency action. Accordingly, Plaintiffs  
10 are entitled to the relief they seek; that is, an order directing USCIS to consider Morales’s  
11 derivative petition for U nonimmigrant status.

12 **V. CONCLUSION**

13 For the foregoing reasons, Plaintiffs’ motion is granted in part and denied in part. The  
14 parties shall immediately meet and confer regarding a proposed judgment and shall submit a  
15 stipulated proposed judgment within 14 days of the date of this order.

16  
17 **IT IS SO ORDERED.**

18 Dated: April 1, 2020

